

Title 9-A: MAINE CONSUMER CREDIT CODE

Article 6: Administration

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Maine Revised Statutes
Title 9-A: MAINE CONSUMER CREDIT CODE
Article 6: Administration

Part 1: POWERS AND FUNCTIONS OF ADMINISTRATOR

§6-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Administration."
[1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§6-102. APPLICABILITY

This Part applies to persons who in this State: [1973, c. 762, §1 (NEW).]

1. Make or solicit consumer credit transactions; or

[1973, c. 762, §1 (NEW) .]

2. Directly collect payments from or enforce rights against consumers arising from consumer credit transactions, wherever they are made.

[1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§6-103. ADMINISTRATION

There is created and established the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation. The Superintendent of Consumer Credit Protection is the head of the Bureau of Consumer Credit Protection. As used in this Act, and except as provided in section 1-301, subsection 2, "administrator" means the Superintendent of Consumer Credit Protection. The administrator is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and to confirmation by the Legislature. The administrator is appointed for a 5-year term, or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by the Governor and Title 5, section 931, subsection 2 does not apply.
[2007, c. 273, Pt. B, §3 (RPR); 2007, c. 695, Pt. A, §47 (AFF).]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 771, §109 (AMD). 1981, c. 359, §3 (AMD). 1981, c. 501, §26 (AMD). 1983, c. 553, §§9,46 (AMD). 1985, c. 763, §A48 (AMD). 1987, c. 105, §1 (AMD). 1987, c. 402, §A84 (AMD). 1987, c. 769, §A39 (RPR). 1989, c. 702, §E5 (AMD). 1995, c. 309, §6 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 502, §H2 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §3 (RPR). 2007, c. 695, Pt. A, §47 (AFF).

§6-104. POWERS OF ADMINISTRATOR; RELIANCE ON RULES; DUTY TO REPORT

1. In addition to other powers granted by this Act, the administrator within the limitations provided by law may:

- A. Receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or refer cases to the Attorney General who shall appear for and represent the administrator in court; [1973, c. 762, §1 (NEW).]
- B. Counsel persons and groups on their rights and duties under this Act; [1973, c. 762, §1 (NEW).]
- C. Establish programs for the education of consumers with respect to credit practices and problems; [1973, c. 762, §1 (NEW).]
- D. Make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public; [1973, c. 762, §1 (NEW).]
- E. Adopt, amend, and repeal rules to carry out the specific provisions of this Act; [1973, c. 762, §1 (NEW).]
- F. Maintain offices within this State; [1973, c. 762, §1 (NEW).]
- G. With the approval of the Commissioner of Professional and Financial Regulation, appoint any necessary hearing examiners, clerks and other employees and agents and fix their compensation, subject to the Civil Service Law; [1995, c. 309, §7 (AMD); 1995, c. 309, §29 (AFF).]
- H. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party; [2011, c. 427, Pt. A, §11 (AMD).]
- I. Convene meetings of individuals representing various segments of the public and the consumer credit industry to advise and consult with the administrator concerning the exercise of powers under this Act and to make recommendations to the administrator. The administrator may authorize reimbursement of reasonable expenses incurred in attending the meetings; and [2011, c. 427, Pt. A, §12 (AMD).]
- J. To the extent permitted in Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1042, enforce the provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 or regulations issued under those provisions with respect to entities that are state-chartered, incorporated, licensed or otherwise authorized to do business under the laws of this State and secure remedies under provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 or remedies otherwise provided under other provisions of law with respect to entities that are state-chartered, incorporated, licensed or otherwise authorized to do business under the laws of this State. [2011, c. 427, Pt. A, §13 (NEW).]

[2011, c. 427, Pt. A, §§11-13 (AMD) .]

2. Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule or advisory ruling of the administrator notwithstanding that after the act or omission the rule or advisory ruling may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

[1983, c. 212, §9 (AMD) .]

3. On or before August 1st each year, the administrator shall report to the Commissioner of Professional and Financial Regulation for the preceding fiscal year ending June 30th on the operation of the administrator's office, on the use of consumer credit in the State and on the problems of persons of small

means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator is authorized to conduct research and make appropriate studies. The report must include a description of the examination and investigation procedures and policies of the administrator's office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices that are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers that have come to the administrator's attention through the administrator's examinations and investigations and the disposing of them under existing law, and a general statement of the activities of the administrator's office and of others to promote the purposes of this Act.

[1993, c. 1, §21 (COR) .]

4. In addition to other rule-making requirements imposed by law, the administrator shall:

A. Adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests; [1985, c. 763, Pt. A, §49 (NEW).]

B. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the administrator or his office; [1985, c. 763, Pt. A, §49 (NEW).]

C. Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the administrator in the discharge of his functions; and [1985, c. 763, Pt. A, §49 (NEW).]

D. Make available for public inspection all final orders, decisions and opinions. [1985, c. 763, Pt. A, §49 (NEW).]

[1985, c. 763, Pt. A, §49 (NEW) .]

5. No rule, order or decision of the administrator is valid or effective against any person or party, nor may it be invoked by the administrator or any party, for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

[1985, c. 763, Pt. A, §49 (NEW) .]

6. Any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection remains applicable to supervised financial organizations after December 31, 1995 unless subsequently modified by the Superintendent of Financial Institutions. In addition, any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection with respect to all regulated entities other than supervised financial organizations remains in effect after December 31, 1995 as if issued by the Director of Consumer Credit Regulation.

[1995, c. 309, §10 (NEW); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 767, §7 (AMD). 1983, c. 212, §9 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 763, §A49 (AMD). 1985, c. 785, §B53 (AMD). RR 1993, c. 1, §§20,21 (COR). 1995, c. 309, §§7-10 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2011, c. 427, Pt. A, §§11-13 (AMD).

§6-104-A. DEPUTY SUPERINTENDENT*(REPEALED)*

SECTION HISTORY

1981, c. 501, §27 (NEW). 1995, c. 309, §11 (AMD). 1995, c. 309, §29 (AFF).

§6-105. ADMINISTRATIVE POWERS WITH RESPECT TO SUPERVISED FINANCIAL ORGANIZATIONS

1. With respect to supervised financial organizations, all powers of the administrator under this Act must be exercised by the Superintendent of Financial Institutions.

[1995, c. 309, §12 (AMD); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

2.

[1995, c. 309, §29 (AFF); 1995, c. 309, §12 (RP) .]

3. An administrator, as defined in section 1-301, subsection 2, and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits and take other official action, as they determine appropriate, if either of them otherwise is empowered to take the action.

[1995, c. 309, §12 (AMD); 1995, c. 309, §29 (AFF) .]

4. In carrying out the responsibilities assigned under section 1-301, subsection 2, the Superintendent of Financial Institutions shall designate an employee within the Bureau of Financial Institutions and shall assign to that employee the responsibility of promoting the purposes and policies of the Maine Consumer Credit Code with respect to supervised financial organizations.

[1995, c. 309, §12 (NEW); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §66 (AMD). 1995, c. 309, §12 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

§6-105-A. UNIFORM MULTISTATE AUTOMATED LICENSING SYSTEM

For the purposes of participating in the establishment and implementation of a uniform multistate automated licensing system, referred to in this section as "the system," for loan brokers, supervised lenders that are not supervised financial organizations and individual mortgage loan originators thereof, the administrator may undertake the following actions. [2011, c. 427, Pt. B, §10 (AMD).]

1. The administrator may establish new rules, consistent with the principles for operation and implementation established by the system, that are necessary for the State to participate in the system, including rules authorizing the system to collect license fees on behalf of the State and remit those fees to the State, authorizing collection fees by the system to pay for its services, authorizing the system to process and

maintain license records and authorizing use of the system's uniform forms, upon the director's finding that each new rule is consistent with the public interest and the purposes of this Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. The administrator may require a credit and background investigation of each applicant for a license as a loan broker, a supervised lender that is not a supervised financial organization or a mortgage loan originator thereof by means including fingerprint checks for state and national criminal histories, commencing at the time the State joins the system pursuant to this section. The cost of the investigations must be charged to the applicants. Information obtained or held by the administrator pursuant to this subsection is nonpublic pursuant to section 6-116 and not subject to disclosure.

[2011, c. 427, Pt. B, §11 (AMD) .]

Any information provided by or to the administrator pursuant to this section that has been designated as confidential by another state's regulatory agency remains the property of the agency furnishing the information and must be kept confidential by the administrator and the system except as authorized by the agency that furnished the information. [2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

SECTION HISTORY

2007, c. 273, Pt. A, §2 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. B, §10, 11 (AMD).

§6-106. EXAMINATIONS AND INVESTIGATIONS

1. The administrator may, at any time, but not more frequently than once every 3 months, conduct an examination or make an investigation of any person he believes has engaged in conduct governed by this Act. For these purposes, the administrator shall have free and reasonable access to the offices, places of business and records of the person and may make and procure copies of those records, books, documents or other tangible things without employing the subpoena powers provided by subsection 2.

[1987, c. 129, §67 (RPR) .]

2. For the purposes of this section, the administrator may administer oaths or affirmations and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to an examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

[1987, c. 129, §67 (RPR) .]

3. If the person's records are located outside this State, that person, at the administrator's option, either shall make the records available to the administrator at a convenient location within the State or allow the administrator or his representatives to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

[1987, c. 129, §67 (RPR) .]

4. If the administrator finds a violation of this Act, he may notify any party to the transaction involved.

[1987, c. 129, §67 (NEW) .]

5. If any individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the administrator or obstructs the proceedings by any means, whether or not in the presence of the administrator, that individual is guilty of contempt. The administrator, through the Attorney General, may file a complaint in the Superior Court setting forth the facts constituting the contempt and requesting an order returnable in not less than 2 days nor more than 5 days, directing the alleged contemner to show cause before the court why he should not be punished for contempt. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender for contempt.

[1987, c. 129, §67 (NEW) .]

6. The expenses of the administrator necessarily incurred in the examination or investigation of any person engaged in conduct governed by this Act must be chargeable to that person. The expenses of the administrator incurred in the examination of supervised financial organizations must be assessed in accordance with the provisions of Title 9-B, section 214, subsection 1. With respect to any other person, that person must be assessed for the actual expenses incurred by the administrator, including, but not necessarily limited to, travel expenses and the proportionate part of the salaries and expenses of examiners engaged in the examination or investigation. Notwithstanding this subsection, for a person other than a supervised financial organization, the administrator may adjust the examination assessments to make more equitable travel-related costs that result from a creditor's location in this State. Notice of the assessment of those costs must be given to the person by the administrator as soon as feasible after the close of the examination or investigation and the person must have the time specified by the administrator to pay the assessment, which may not be less than 30 days.

[1997, c. 727, Pt. B, §19 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-E (AMD). 1981, c. 235, §4 (AMD). 1987, c. 129, §67 (RPR). 1997, c. 727, §B19 (AMD).

§6-107. APPLICATION OF PART ON ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Except as otherwise provided, an administrative action taken by the administrator pursuant to this Article or the Part on supervised lenders, Part 2, of the Article on Finance Charges, Article II, may be taken under Part on Administrative Procedure and Judicial Review, Part 4, of this Article, notwithstanding Title 9-B, section 231, subsections 2 and 3 and section 233. [1977, c. 564, §46 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 564, §46 (AMD).

§6-108. ADMINISTRATIVE ENFORCEMENT ORDERS

1. After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this Act or any lawful regulation issued by the administrator and may further order that the person take appropriate corrective action to reimburse consumers in cases where consumers have been charged amounts in excess of those permitted by this Act. Notice and hearing need not be provided prior to issuance of an order to cease and desist, when, in the opinion of the administrator, immediate action is required to protect the public interest, and:

A. The creditor has not complied with section 6-202; or [1973, c. 762, §1 (NEW) .]

B. The creditor does not maintain a permanent place of business in this State. [1973, c. 762, §1 (NEW) .]

A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Superior Court. The proceeding for review is initiated and conducted in accordance with Title 5, chapter 375, subchapter VII.

[1983, c. 389, (AMD) .]

2.

[1977, c. 694, §155-G (RP) .]

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

[1973, c. 762, §1 (NEW) .]

4. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

[1977, c. 694, §155-H (AMD) .]

5. If no proceeding is initiated, the administrator, through the Attorney General, may obtain a decree of the Superior Court for enforcement of its order upon showing that the order was issued in compliance with this section, that no proceeding for review was timely initiated and that the respondent is subject to the jurisdiction of the court. The decree of the Superior Court may also provide any relief available in an action brought under section 6-110.

[1977, c. 694, §155-I (AMD) .]

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but, through the Attorney General, may bring a civil action for an injunction, section 6-111.

[1973, c. 762, §1 (NEW) .]

7. No order may be issued under this section if the creditor establishes by a preponderance of evidence that a violation was unintentional and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error except that this subsection does not apply if the violation had previously been brought to the attention of the creditor by way of examination, investigation or formal complaint through the administrator, or if the violation involves the obligation to refund excess charges, as specified in section 5-201, subsections 2 and 3 or section 9-405, subsections 2 and 4.

[1993, c. 496, §3 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155F-155I (AMD). 1983, c. 212, §10 (AMD). 1983, c. 389, (AMD). 1985, c. 763, §A50 (AMD). 1993, c. 496, §3 (AMD).

§6-109. ASSURANCE OF DISCONTINUANCE

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator, section 6-108, or by a court, sections 6-110 to 6-112, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. Such an assurance may include any, or any combination, of the following: Stipulations for the voluntary payment by the creditor of the costs of investigation or of an amount to be held in escrow as restitution to debtors aggrieved by past or future conduct of the creditor or to cover costs of future investigation, or admissions of past specific acts by the creditor or that such acts violated this Act or other statutes. A violation of an assurance of discontinuance shall be a violation of this Act. [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§6-110. INJUNCTIONS AGAINST VIOLATIONS OF ACT

The administrator, through the Attorney General, may bring a civil action to restrain any person from violating this Act. [1975, c. 134, §3 (AMD).]

In such an action, the court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any practices prohibited by this Act, to reform contracts to conform to this Act or to rescind contracts in which a violation has tended to induce the debtor to contract with the creditor, even though the debtors are not parties to the action. In such an action, the court may, in its discretion, award the administrator his reasonable costs of investigation and reasonable attorneys' fees incurred in bringing the action. An action under this section and an action under section 6-113 may be brought jointly using a single complaint. [1983, c. 212, §11 (AMD).]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 134, §3 (AMD). 1983, c. 212, §11 (AMD).

§6-111. INJUNCTIONS AGAINST UNCONSCIONABLE AGREEMENTS AND FRAUDULENT OR UNCONSCIONABLE CONDUCT

1. The administrator, through the Attorney General, may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of:

A. Making or enforcing unconscionable terms or provisions of consumer credit transactions; [1973, c. 762, §1 (NEW).]

B. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions; or [1973, c. 762, §1 (NEW).]

C. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

2. In an action brought pursuant to this section, the court may grant relief only if it finds:

A. That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct; [1973, c. 762, §1 (NEW).]

B. That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and [1973, c. 762, §1 (NEW).]

C. That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

3. In applying this section, consideration shall be given to each of the following factors, among others:

A. Belief by the creditor at the time consumer credit transactions are entered into that there was no reasonable probability of payment in full of the obligation by the consumer; [1973, c. 762, §1 (NEW) .]

B. In the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased; [1973, c. 762, §1 (NEW) .]

C. In the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees; [1973, c. 762, §1 (NEW) .]

D. The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and [1973, c. 762, §1 (NEW) .]

E. The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors. [1973, c. 762, §1 (NEW) .]

[1973, c. 762, §1 (NEW) .]

4. In an action brought pursuant to this section, a charge or practice expressly permitted by this Act is not in and of itself unconscionable in the absence of other practices or circumstances.

[1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW) .

§6-112. TEMPORARY RELIEF

With respect to an action brought to enjoin violations of the Act, section 6-110, or unconscionable agreements or fraudulent or unconscionable conduct, section 6-111, the administrator, through the Attorney General, may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate. [1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW) .

§6-113. CIVIL ACTIONS BY ADMINISTRATOR

1. After demand, the administrator, through the Attorney General, may bring a civil action against a creditor for any violation listed in section 5-201 or for a violation of Article 8-A. An action may relate to transactions with more than one consumer. If it is found that the creditor has made a violation so listed, the court shall order respondent to grant to each consumer affected the option to recover all excess charges, to

have the contract reformed to conform to this Act or to rescind the contract. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against the consumer's obligation. A consumer's action takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. When an action takes precedence over another action under this subsection, to the extent appropriate, the other action may be stayed while the precedent action is pending and may be dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A consumer whose action is dismissed or results in a final judgment denying the claim may not participate in any subsequent recovery on the claim by the administrator.

[2011, c. 427, Pt. D, §12 (AMD) .]

2. The administrator, through the Attorney General, may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in repeated violations, a willful violation of this Act or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the creditor establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under this subsection.

No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than 2 years before the action is brought.

[1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§23,26 (AMD). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. D, §12 (AMD).

§6-114. CONSUMER'S REMEDIES NOT AFFECTED

The grant of powers to the administrator in this Article does not affect remedies available to consumers under this Act or under other principles of law or equity. [1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§6-115. VENUE

The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division in which respondent resides or transacts business. [1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§6-116. CONFIDENTIALITY OF RECORDS

The following records of the Bureau of Consumer Credit Protection shall be confidential, unless those records become part of the record of a judicial proceeding or administrative hearing: [1995, c. 309, §26 (AMD); 1995, c. 309, §29 (AFF); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

1. Records that identify consumers by name or identify accounts with information from which consumers can be identified by name, provided that, if the names and other information identifying consumers has been deleted, copies of any such records shall be public records;

[1985, c. 763, Pt. A, §51 (NEW) .]

2. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with the licensing, registration or other regulatory functions of the administrator;

[2009, c. 402, §4 (AMD) .]

3. Proposed loan documents and other commercial paper submitted to be approved for use and not yet available to the general public or customers of the submitting institution or firm; and

[2009, c. 402, §5 (AMD) .]

4. Any contact information or financial information relating to a mortgagor submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a mortgagor's contact information.

[2009, c. 402, §6 (NEW) .]

SECTION HISTORY

1985, c. 763, §A51 (NEW). 1995, c. 309, §26 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 397, §1 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF). 2009, c. 402, §§4-6 (AMD).

§6-117. CONTRACTS WITH OTHER STATE AND FEDERAL AGENCIES

1. The administrator may employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as may be necessary to assist the administrator in carrying out the regulatory functions of this Act. The administrator may contract agency staff to other state and federal agencies to assist those other state and federal agencies in carrying out their regulatory functions.

[1999, c. 184, §5 (NEW) .]

2. The administrator may enter into cooperative agreements with other state, federal or foreign agencies to facilitate the regulatory functions of the administrator, including, but not limited to, information sharing, coordination of examinations and joint examinations.

[1999, c. 184, §5 (NEW) .]

3. Any information furnished pursuant to this section by or to the administrator that has been designated as confidential by the agency furnishing the information remains the property of the agency furnishing the information and must be kept confidential by the recipient of the information except as authorized by the furnishing agency.

[1999, c. 184, §5 (NEW) .]

SECTION HISTORY

1999, c. 184, §5 (NEW).

Part 2: NOTIFICATION AND FEES

§6-201. APPLICABILITY

This Part applies to a person engaged in this State in entering into consumer credit transactions and to a person having an office or place of business in this State who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from these transactions. In addition, this Part applies to a person, wherever located, who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from a consumer credit transaction subject to this Title. This Part also applies to a person, other than a supervised financial organization, wherever located, who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from a consumer credit transaction subject to Article 9. [2005, c. 206, §2 (AMD).]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1979, c. 660, §10 (AMD). 1989, c. 70, §2 (AMD). 1997, c. 727, §B20 (AMD). 2001, c. 371, §5 (AMD). 2005, c. 206, §2 (AMD).

§6-202. NOTIFICATION

1. Persons subject to this Part shall file notification with the administrator before commencing business in this State, and, thereafter, on or before January 31st of each year. The notification filings must be made to the administrator and must be in a form and contain information that the administrator considers appropriate for the proper supervision and regulation of such persons.

- A. [2009, c. 228, §1 (RP).]
- B. [2009, c. 228, §1 (RP).]
- C. [2009, c. 228, §1 (RP).]
- D. [2009, c. 228, §1 (RP).]
- E. [2009, c. 228, §1 (RP).]
- F. [2009, c. 228, §1 (RP).]
- G. [2009, c. 228, §1 (RP).]

[2009, c. 228, §1 (AMD) .]

2.

[2009, c. 228, §1 (RP) .]

3. In addition to the notification filings required in subsection 1, the administrator may require reports and other information at such times and in such form as the administrator considers appropriate for the proper supervision of the persons subject to this Part.

[2009, c. 228, §1 (NEW) .]

4. If information in a notification required in subsection 1 becomes inaccurate after filing, the administrator must be advised in writing of the new or corrected information.

[2009, c. 228, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 767, §8 (AMD). 2009, c. 228, §1 (AMD).

§6-203. FEES

1. A person required to file notification shall at the time he files such notification pay to the administrator an annual fee of \$20 for that year and an annual fee of \$10 for each branch thereof.

[1981, c. 460, (AMD) .]

2. Persons required to file notification who are sellers, lessors or lenders shall pay an additional fee, at the time and in the manner stated in subsection 1, of \$25 for each \$100,000, or part thereof, of the original unpaid balances arising from consumer credit transactions entered into in this State within the preceding calendar year and held either by the seller, lessor or lender for more than 30 days after the inception of the sale, lease or loan giving rise to the obligations, or by an assignee who has not filed notification.

[2003, c. 462, §1 (AMD) .]

2-A. For purposes of assessing fees under this section, a refinancing of a sale, lease or loan made by the original creditor of the obligation that results in an increase in the amount of an obligation over the unpaid principal balance of the prior sale, lease or loan is considered a new sale, lease or loan to the extent of the amount of the increase, and volume fees must be paid on the amount of the increase. Volume fees must be paid on the full amount of a refinancing of a sale, lease or loan made by a creditor other than the original creditor.

[2003, c. 462, §2 (NEW) .]

3. Persons required to file notification who are assignees shall pay an additional fee, at the time and in the manner stated in subsection 1, of \$25 for each \$100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit transactions entered into in this State taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

[1983, c. 204, §2 (AMD) .]

3-A. Notwithstanding subsections 2 and 3, lenders who are supervised financial organizations shall pay a volume fee of \$20 for each \$100,000, or part thereof, of the original unpaid balances arising from or taken by assignment from consumer credit transactions entered into in this State during the previous calendar year.

[1993, c. 268, §2 (NEW) .]

3-B. Notwithstanding subsections 2 and 3, lenders regulated by the Bureau of Consumer Credit Protection who are supervised lenders making loans secured by an interest in land shall pay a volume fee on the original unpaid balances arising from consumer credit transactions entered into in this State during the previous calendar year of:

A. Fifteen dollars for each \$100,000, or part thereof, if the fund balance of the Bureau of Consumer Credit Protection as of October 1st of the previous calendar year exceeds 125% of the office's current annual budget; or [2003, c. 654, §1 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

B. Twenty dollars for each \$100,000, or part thereof, if the fund balance of the Bureau of Consumer Credit Protection as of October 1st of the previous calendar year does not exceed 125% of the office's current annual budget. [2003, c. 654, §1 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

[2003, c. 654, §1 (RPR); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

3-C. The administrator may adjust the volume fees set out in subsections 2, 3 and 3-B by rule not more frequently than annually. In setting the fees, the administrator shall consider the reasonable costs of regulation of all aspects of such transactions and the staffing levels required to administer the responsibilities of the Bureau of Consumer Credit Protection. The fee assessed pursuant to subsections 2 and 3 may not exceed \$25 per \$100,000, and the fee assessed pursuant to subsection 3-B may not exceed \$20 per \$100,000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 654, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

4.

[1987, c. 129, §68 (RP) .]

4-A. The bureau may charge fees to nonresident individuals and resident or nonresident organizations wishing to purchase educational materials produced and distributed by the bureau.

[1977, c. 179, §1 (NEW) .]

5. The aggregate of fees provided for by this section is appropriated for the use of the administrator. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year.

[1973, c. 762, §1 (NEW) .]

6. Volume fees. Volume fees paid with respect to consumer credit transactions that are originated by a seller, lessor or lender, other than a supervised financial organization, and that are subsequently assigned to a financial institution, as defined in Title 9-B, section 131, subsection 17, or to a credit union, as defined in Title 9-B, section 131, subsection 12, within 30 days after the inception of the consumer credit transaction must be allocated within the Department of Professional and Financial Regulation, between the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions in proportion to the reasonable costs of regulation of all aspects of such transactions. The agreement for allocation must be established by the Commissioner of Professional and Financial Regulation, in consultation with the Superintendent of Consumer Credit Protection and the Superintendent of Financial Institutions, not more frequently than every 24 months.

[1997, c. 393, Pt. B, §5 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2007, c. 273, Pt. B, §§5, 6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 179, §3 (AMD). 1975, c. 402, §§1,2 (AMD). 1977, c. 179, §1 (AMD). 1981, c. 460, (AMD). 1983, c. 204, §§1,2 (AMD). 1987, c. 129, §68 (AMD). 1987, c. 396, §11 (AMD). 1987, c. 590, (AMD). 1993, c. 268, §§1,2 (AMD). 1997, c. 155, §F1 (AMD). 1997, c. 155, §F2 (AFF). 1997, c. 393, §B5 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2003, c. 462, §§1,2 (AMD). 2003, c. 654, §§1,2 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §§5, 6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6-204. PENALTY

1. The administrator may impose a penalty of \$5 per day on any person failing to comply with the requirements of sections 6-106, subsection 6; 6-202 and 6-203.

[1987, c. 129, §69 (AMD) .]

2. No penalty may be imposed if the fees required by section 6-203, subsections 1 to 3, are paid not more than 30 days after the date established in section 6-202, subsection 1, or if the expenses of examination or investigation incurred by the administrator pursuant to section 6-106, subsection 6, are paid within the time period prescribed by the administrator which shall not be less than 30 days of receipt of notice by the examinee of their assessment.

[1987, c. 129, §70 (AMD) .]

3. If a licensee fails to pay the fees required by section 6-203, subsections 1 to 3 on or before February 20th of any year, or if the licensee fails to pay the expenses of examination or investigation of the administrator within the time period prescribed by the administrator which shall not be less than 30 days of receipt of the notice of assessment, the failure may be treated by the administrator as grounds for revocation of the license.

[1987, c. 129, §70 (AMD) .]

4. The administrator shall comply with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, in seeking compliance with this section. The administrator may seek enforcement of any order issued under this section in a court of competent jurisdiction.

[1979, c. 660, §11 (NEW) .]

SECTION HISTORY

1979, c. 660, §11 (NEW). 1983, c. 720, §21 (AMD). 1985, c. 763, §A52 (AMD). 1987, c. 129, §§69,70 (AMD).

Part 3: COUNCIL OF ADVISORS ON CONSUMER CREDIT

§6-301. COUNCIL OF ADVISORS ON CONSUMER CREDIT

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 295, §§26,27 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

§6-302. FUNCTION OF COUNCIL; CONFLICT OF INTEREST

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

§6-303. MEETINGS

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

Part 4: ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

§6-401. APPLICABILITY AND SCOPE

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A53 (RP).

§6-402. DEFINITIONS IN PART: "CONTESTED CASE"; "LICENSE"; "LICENSING"

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-J (AMD). 1985, c. 763, §A54 (RP).

§6-403. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A55 (RP).

§6-404. PROCEDURE FOR ADOPTION OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-K (RPR). 1985, c. 763, §A56 (RP).

§6-405. TAKING EFFECT OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-L (RPR). 1985, c. 763, §A57 (RP).

§6-406. PUBLICATION OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-M (RP).

§6-407. PETITION FOR ADOPTION OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-N (RP).

§6-408. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-O (AMD). 1983, c. 212, §12 (RP).

§6-409. ADVISORY RULINGS BY ADMINISTRATOR

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-P (RPR). 1985, c. 763, §A58 (RP).

§6-410. CONTESTED CASES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-Q (RPR). 1985, c. 763, §A59 (RP).

§6-411. RULES OF EVIDENCE; OFFICIAL NOTICE

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1983, c. 212, §13 (AMD). 1985, c. 763, §A60 (RP).

§6-412. DECISIONS AND ORDERS

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A61 (RP).

§6-413. LICENSES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A62 (RP).

§6-414. JUDICIAL REVIEW OF CONTESTED CASES

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155R,155S (AMD). 1985, c. 763, §A63 (RP).

§6-415. APPEALS**(REPEALED)**

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-T (RP).

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